



General Assembly

February Session, 2012

**Substitute Bill No. 5367**

\*        HB05367JUD        040212        \*

**AN ACT CONCERNING COMPETENCY TO STAND TRIAL.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. Subsections (i) to (r), inclusive, of section 54-56d of the  
2       2012 supplement to the general statutes are repealed and the following  
3       is substituted in lieu thereof (*Effective October 1, 2012*):

4       (i) The placement of the defendant for treatment for the purpose of  
5       rendering the defendant competent shall comply with the following  
6       conditions: (1) The period of placement under the order or  
7       combination of orders shall not exceed the period of the maximum  
8       sentence which the defendant could receive on conviction of the  
9       charges against the defendant or eighteen months, whichever is less;  
10      (2) the placement shall be either (A) in the custody of the  
11      Commissioner of Mental Health and Addiction Services, the  
12      Commissioner of Children and Families or the Commissioner of  
13      Developmental Services, except that any defendant placed for  
14      treatment with the Commissioner of Mental Health and Addiction  
15      Services may remain in the custody of the Department of Correction  
16      pursuant to subsection (p) of this section; or, (B) if the defendant or the  
17      appropriate commissioner agrees to provide payment, in the custody  
18      of any appropriate mental health facility or treatment program which  
19      agrees to provide treatment to the defendant and to adhere to the  
20      requirements of this section; and (3) the court shall order the  
21      placement, on either an inpatient or an outpatient basis, which the

22 court finds is the least restrictive placement appropriate and available  
23 to restore competency. If outpatient treatment is the least restrictive  
24 placement for a defendant who has not yet been released from a  
25 correctional facility, the court shall consider whether the availability of  
26 such treatment is a sufficient basis on which to release the defendant  
27 on a promise to appear, conditions of release, cash bail or bond. If the  
28 court determines that the defendant may not be so released, the court  
29 shall order treatment of the defendant on an inpatient basis at a mental  
30 health facility or facility for persons with intellectual disability. Not  
31 later than twenty-four hours after the court orders placement of the  
32 defendant for treatment for the purpose of rendering the defendant  
33 competent, the examiners shall transmit information obtained about  
34 the defendant during the course of an examination pursuant to  
35 subsection (d) of this section to the health care provider named in the  
36 court's order.

37 (j) The person in charge of the treatment facility, or such person's  
38 designee, or the Commissioner of Mental Health and Addiction  
39 Services with respect to any defendant who is in the custody of the  
40 Commissioner of Correction pursuant to subsection (p) of this section,  
41 shall submit a written progress report to the court (1) at least seven  
42 days prior to the date of any hearing on the issue of the defendant's  
43 competency; (2) whenever he or she believes that the defendant has  
44 attained competency; (3) whenever he or she believes that there is not a  
45 substantial probability that the defendant will attain competency  
46 within the period covered by the placement order; (4) whenever,  
47 within the first one hundred twenty days of the period covered by the  
48 placement order, he or she believes that the defendant would be  
49 eligible for civil commitment pursuant to subdivision (2) of subsection  
50 (h) of this section; or (5) whenever he or she believes that the  
51 defendant is still not competent but has improved sufficiently such  
52 that continued inpatient commitment is no longer the least restrictive  
53 placement appropriate and available to restore competency. The  
54 progress report shall contain: (A) The clinical findings of the person  
55 submitting the report and the facts on which the findings are based; (B)

56 the opinion of the person submitting the report as to whether the  
57 defendant has attained competency or as to whether the defendant is  
58 making progress, under treatment, toward attaining competency  
59 within the period covered by the placement order; (C) the opinion of  
60 the person submitting the report as to whether the defendant appears  
61 to be eligible for civil commitment to a hospital for psychiatric  
62 disabilities pursuant to subsection (m) of this section and the  
63 appropriateness of such civil commitment, if there is not a substantial  
64 probability that the defendant will attain competency within the  
65 period covered by the placement order; and (D) any other information  
66 concerning the defendant requested by the court, including, but not  
67 limited to, the method of treatment or the type, dosage and effect of  
68 any medication the defendant is receiving. Not later than five business  
69 days after the court finds either that the defendant will not attain  
70 competency within the period of any placement order under this  
71 section or that the defendant has regained competency, the person in  
72 charge of the treatment facility, or such person's designee, or the  
73 Commissioner of Mental Health and Addiction Services with respect  
74 to any defendant who is in the custody of the Commissioner of  
75 Correction pursuant to subsection (p) of this section, shall provide a  
76 copy of the written progress report to the examiners who examined the  
77 defendant pursuant to subsection (d) of this section.

78 (k) (1) Whenever any placement order for treatment is rendered or  
79 continued, the court shall set a date for a hearing, to be held within  
80 ninety days, for reconsideration of the issue of the defendant's  
81 competency. Whenever the court (A) receives a report pursuant to  
82 subsection (j) of this section which indicates that (i) the defendant has  
83 attained competency, (ii) the defendant will not attain competency  
84 within the remainder of the period covered by the placement order,  
85 (iii) the defendant will not attain competency within the remainder of  
86 the period covered by the placement order absent administration of  
87 psychiatric medication for which the defendant is unwilling or unable  
88 to provide consent, (iv) the defendant would be eligible for civil  
89 commitment pursuant to subdivision (2) of subsection (h) of this

90 section, or (v) the defendant is still not competent but has improved  
91 sufficiently such that continued inpatient commitment is no longer the  
92 least restrictive placement appropriate and available to restore  
93 competency, or (B) receives a report pursuant to subparagraph (A)(iii)  
94 of subdivision (2) of subsection (h) of this section which indicates that  
95 (i) the application for civil commitment of the defendant has been  
96 denied or has not been pursued by the Commissioner of Mental Health  
97 and Addiction Services, or (ii) the defendant is unwilling or unable to  
98 comply with a treatment plan despite reasonable efforts of the  
99 treatment facility to encourage the defendant's compliance, the court  
100 shall set the matter for a hearing not later than ten days after the report  
101 is received. The hearing may be waived by the defendant only if the  
102 report indicates that the defendant is competent. With respect to a  
103 defendant who is in the custody of the Commissioner of Correction  
104 pursuant to subsection (p) of this section, the Commissioner of Mental  
105 Health and Addiction Services shall retain responsibility for providing  
106 testimony at any hearing under this subsection. The court shall  
107 determine whether the defendant is competent or is making progress  
108 toward attaining competency within the period covered by the  
109 placement order. If the court finds that the defendant is competent, the  
110 defendant shall be returned to the custody of the Commissioner of  
111 Correction or released, if the defendant has met the conditions for  
112 release, and the court shall continue with the criminal proceedings. If  
113 the court finds that the defendant is still not competent but that the  
114 defendant is making progress toward attaining competency, the court  
115 may continue or modify the placement order. If the court finds that the  
116 defendant is still not competent but that the defendant is making  
117 progress toward attaining competency and inpatient placement is no  
118 longer the least restrictive placement appropriate and available to  
119 restore competency, the court shall consider whether the availability of  
120 such less restrictive placement is a sufficient basis on which to release  
121 the defendant on a promise to appear, conditions of release, cash bail  
122 or bond and may order continued treatment to restore competency on  
123 an outpatient basis. If the court finds that the defendant is still not  
124 competent and will not attain competency within the remainder of the

125 period covered by the placement order absent administration of  
126 psychiatric medication for which the defendant is unwilling or unable  
127 to provide consent, the court shall proceed as provided in subdivisions  
128 (2), (3) and (4) of this subsection. If the court finds that the defendant is  
129 eligible for civil commitment, the court may order placement of the  
130 defendant at a treatment facility pending civil commitment  
131 proceedings pursuant to subdivision (2) of subsection (h) of this  
132 section.

133 (2) If the court finds that the defendant will not attain competency  
134 within the remainder of the period covered by the placement order  
135 absent administration of psychiatric medication for which the  
136 defendant is unwilling or unable to provide consent, and after any  
137 hearing held pursuant to subdivision (3) of this subsection, the court  
138 may order the involuntary medication of the defendant if the court  
139 finds by clear and convincing evidence that: (A) To a reasonable  
140 degree of medical certainty, involuntary medication of the defendant  
141 will render the defendant competent to stand trial, (B) an adjudication  
142 of guilt or innocence cannot be had using less intrusive means, (C) the  
143 proposed treatment plan is narrowly tailored to minimize intrusion on  
144 the defendant's liberty and privacy interests, (D) the proposed drug  
145 regimen will not cause an unnecessary risk to the defendant's health,  
146 and (E) the seriousness of the alleged crime is such that the criminal  
147 law enforcement interest of the state in fairly and accurately  
148 determining the defendant's guilt or innocence overrides the  
149 defendant's interest in self-determination.

150 (3) (A) If the court finds that the defendant is unwilling or unable to  
151 provide consent for the administration of psychiatric medication, and  
152 prior to deciding whether to order the involuntary medication of the  
153 defendant under subdivision (2) of this subsection, the court shall  
154 appoint a health care guardian who shall be a licensed health care  
155 provider with specialized training in the treatment of persons with  
156 psychiatric disabilities to represent the health care interests of the  
157 defendant before the court. Notwithstanding the provisions of section  
158 52-146e, such health care guardian shall have access to the psychiatric

159 records of the defendant. Such health care guardian shall file a report  
160 with the court not later than thirty days after his or her appointment.  
161 The report shall set forth such health care guardian's findings and  
162 recommendations concerning the administration of psychiatric  
163 medication to the defendant, including the risks and benefits of such  
164 medication, the likelihood and seriousness of any adverse side effects  
165 and the prognosis with and without such medication. The court shall  
166 hold a hearing on the matter not later than ten days after receipt of  
167 such health care guardian's report and shall, in deciding whether to  
168 order the involuntary medication of the defendant, take into account  
169 such health care guardian's opinion concerning the health care  
170 interests of the defendant.

171 (B) The court, in anticipation of considering continued involuntary  
172 medication of the defendant under subdivision (4) of this subsection,  
173 shall order the health care guardian to file a supplemental report  
174 updating the findings and recommendations contained in the health  
175 care guardian's report filed under subparagraph (A) of this  
176 subdivision.

177 (4) If, after the defendant has been found to have attained  
178 competency by means of involuntary medication ordered under  
179 subdivision (2) of this subsection, the court determines by clear and  
180 convincing evidence that the defendant will not remain competent  
181 absent the continued administration of psychiatric medication for  
182 which the defendant is unable to provide consent, and after any  
183 hearing held pursuant to subdivision (3) of this subsection and  
184 consideration of the supplemental report of the health care guardian,  
185 the court may order continued involuntary medication of the  
186 defendant if the court finds by clear and convincing evidence that: (A)  
187 To a reasonable degree of medical certainty, continued involuntary  
188 medication of the defendant will maintain the defendant's competency  
189 to stand trial, (B) an adjudication of guilt or innocence cannot be had  
190 using less intrusive means, (C) the proposed treatment plan is  
191 narrowly tailored to minimize intrusion on the defendant's liberty and  
192 privacy interests, (D) the proposed drug regimen will not cause an

193 unnecessary risk to the defendant's health, and (E) the seriousness of  
194 the alleged crime is such that the criminal law enforcement interest of  
195 the state in fairly and accurately determining the defendant's guilt or  
196 innocence overrides the defendant's interest in self-determination.  
197 Continued involuntary medication ordered under this subdivision  
198 may be administered to the defendant while the criminal charges  
199 against the defendant are pending and the defendant is in the custody  
200 of the Commissioner of Correction or the Commissioner of Mental  
201 Health and Addiction Services. An order for continued involuntary  
202 medication of the defendant under this subdivision shall be reviewed  
203 by the court every one hundred eighty days while such order remains  
204 in effect. The court shall order the health care guardian to file a  
205 supplemental report for each such review. After any hearing held  
206 pursuant to subdivision (3) of this subsection and consideration of the  
207 supplemental report of the health care guardian, the court may  
208 continue such order if the court finds, by clear and convincing  
209 evidence, that the criteria enumerated in subparagraphs (A) to (E),  
210 inclusive, of this subdivision are met.

211 (5) The state shall hold harmless and indemnify any health care  
212 guardian appointed by the court pursuant to subdivision (3) of this  
213 subsection from financial loss and expense arising out of any claim,  
214 demand, suit or judgment by reason of such health care guardian's  
215 alleged negligence or alleged deprivation of any person's civil rights or  
216 other act or omission resulting in damage or injury, provided the  
217 health care guardian is found to have been acting in the discharge of  
218 his or her duties pursuant to said subdivision and such act or omission  
219 is found not to have been wanton, reckless or malicious. The  
220 provisions of subsections (b), (c) and (d) of section 5-141d shall apply  
221 to such health care guardian. The provisions of chapter 53 shall not  
222 apply to a claim against such health care guardian.

223 (l) If a defendant who has been ordered placed for treatment on an  
224 inpatient basis at a mental health facility or [mental retardation] a  
225 facility for persons with intellectual disability is released from such  
226 facility on a furlough or for work, therapy or any other reason and fails

227 to return to the facility in accordance with the terms and conditions of  
228 the defendant's release, the person in charge of the facility, or such  
229 person's designee, shall, within twenty-four hours of the defendant's  
230 failure to return, report such failure to the prosecuting authority for  
231 the court location which ordered the placement of the defendant. Upon  
232 receipt of such a report, the prosecuting authority shall, within  
233 available resources, make reasonable efforts to notify any victim or  
234 victims of the crime for which the defendant is charged of such  
235 defendant's failure to return to the facility. No civil liability shall be  
236 incurred by the state or the prosecuting authority for failure to notify  
237 any victim or victims in accordance with this subsection. The failure of  
238 a defendant to return to the facility in which the defendant has been  
239 placed may constitute sufficient cause for the defendant's rearrest  
240 upon order by the court.

241 (m) (1) If at any time the court determines that there is not a  
242 substantial probability that the defendant will attain competency  
243 within the period of treatment allowed by this section, or if at the end  
244 of such period the court finds that the defendant is still not competent,  
245 the court shall consider any recommendation made by the examiners  
246 pursuant to subsection (d) of this section and any opinion submitted  
247 by the treatment facility pursuant to subparagraph (C) of subsection (j)  
248 of this section regarding eligibility for, and the appropriateness of, civil  
249 commitment to a hospital for psychiatric disabilities and shall either  
250 release the defendant from custody or order the defendant placed in  
251 the custody of the Commissioner of Mental Health and Addiction  
252 Services, the Commissioner of Children and Families or the  
253 Commissioner of Developmental Services. If the court orders the  
254 defendant placed in the custody of the Commissioner of Children and  
255 Families or the Commissioner of Developmental Services, the  
256 commissioner given custody, or the commissioner's designee, shall  
257 then apply for civil commitment in accordance with sections 17a-75 to  
258 17a-83, inclusive, or 17a-270 to 17a-282, inclusive. If the court orders  
259 the defendant placed in the custody of the Commissioner of Mental  
260 Health and Addiction Services, the court may order the commissioner,

261 or the commissioner's designee, to apply for civil commitment in  
262 accordance with sections 17a-495 to 17a-528, inclusive, or order the  
263 commissioner, or the commissioner's designee, to provide services to  
264 the defendant in a less restrictive setting, provided the examiners have  
265 determined in the written report filed pursuant to subsection (d) of this  
266 section or have testified pursuant to subsection (e) of this section that  
267 such services are available and appropriate. If the court orders the  
268 defendant placed in the custody of the Commissioner of Mental Health  
269 and Addiction Services and orders the commissioner to apply for civil  
270 commitment pursuant to this subsection, the court may order the  
271 commissioner to give the court notice when the defendant is released  
272 from the commissioner's custody if such release is prior to the  
273 expiration of the time within which the defendant may be prosecuted  
274 for the crime with which the defendant is charged, provided such  
275 order indicates when such time expires. If the court orders the  
276 defendant placed in the custody of the Commissioner of  
277 Developmental Services for purposes of commitment under any  
278 provision of sections 17a-270 to 17a-282, inclusive, the court may order  
279 the Commissioner of Developmental Services to give the court notice  
280 when the defendant's commitment is terminated if such termination is  
281 prior to the expiration of the time within which the defendant may be  
282 prosecuted for the crime with which the defendant is charged,  
283 provided such order indicates when such time expires.

284 (2) The court shall hear arguments as to whether the defendant  
285 should be released or should be placed in the custody of the  
286 Commissioner of Mental Health and Addiction Services, the  
287 Commissioner of Children and Families or the Commissioner of  
288 Developmental Services.

289 (3) If the court orders the release of a defendant charged with the  
290 commission of a crime that resulted in the death or serious physical  
291 injury, as defined in section 53a-3, of another person, or with a  
292 violation of subdivision (2) of subsection (a) of section 53-21,  
293 subdivision (2) of subsection (a) of section 53a-60 or section 53a-60a,  
294 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b, or orders the

295 placement of such defendant in the custody of the Commissioner of  
296 Mental Health and Addiction Services or the Commissioner of  
297 Developmental Services, the court may, on its own motion or on  
298 motion of the prosecuting authority, order, as a condition of such  
299 release or placement, periodic examinations of the defendant as to the  
300 defendant's competency at intervals of not less than six months. Such  
301 an examination shall be conducted in accordance with subsection (d)  
302 of this section. Periodic examinations ordered by the court under this  
303 subsection shall continue until the court finds that the defendant has  
304 attained competency or until the time within which the defendant may  
305 be prosecuted for the crime with which the defendant is charged, as  
306 provided in section 54-193 or 54-193a, has expired, whichever occurs  
307 first.

308 (4) Upon receipt of the written report as provided in subsection (d)  
309 of this section, the court shall, upon the request of either party filed not  
310 later than thirty days after the court receives such report, conduct a  
311 hearing as provided in subsection (e) of this section. Such hearing shall  
312 be held not later than ninety days after the court receives such report.  
313 If the court finds that the defendant has attained competency, the  
314 defendant shall be returned to the custody of the Commissioner of  
315 Correction or released, if the defendant has met the conditions for  
316 release, and the court shall continue with the criminal proceedings.

317 (5) The court shall dismiss, with or without prejudice, any charges  
318 for which a nolle prosequi is not entered when the time within which  
319 the defendant may be prosecuted for the crime with which the  
320 defendant is charged, as provided in section 54-193 or 54-193a, has  
321 expired. Notwithstanding the record erasure provisions of section 54-  
322 142a, police and court records and records of any state's attorney  
323 pertaining to a charge which is nolleed or dismissed without prejudice  
324 while the defendant is not competent shall not be erased until the time  
325 for the prosecution of the defendant expires under section 54-193 or 54-  
326 193a. A defendant who is not civilly committed as a result of an  
327 application made by the Commissioner of Mental Health and  
328 Addiction Services, the Commissioner of Children and Families or the

329 Commissioner of Developmental Services pursuant to this section shall  
330 be released. A defendant who is civilly committed pursuant to such an  
331 application shall be treated in the same manner as any other civilly  
332 committed person.

333 (n) The cost of the examination effected by the Commissioner of  
334 Mental Health and Addiction Services and of testimony of persons  
335 conducting the examination effected by the commissioner shall be paid  
336 by the Department of Mental Health and Addiction Services. The cost  
337 of the examination and testimony by physicians appointed by the  
338 court shall be paid by the Judicial Department. If the defendant is  
339 indigent, the fee of the person selected by the defendant to observe the  
340 examination and to testify on the defendant's behalf shall be paid by  
341 the Public Defender Services Commission. The expense of treating a  
342 defendant placed in the custody of the Commissioner of Mental Health  
343 and Addiction Services, the Commissioner of Children and Families or  
344 the Commissioner of Developmental Services pursuant to subdivision  
345 (2) of subsection (h) of this section or subsection (i) of this section shall  
346 be computed and paid for in the same manner as is provided for  
347 persons committed by a probate court under the provisions of sections  
348 17b-122, 17b-124 to 17b-132, inclusive, 17b-136 to 17b-138, inclusive,  
349 17b-194 to 17b-197, inclusive, 17b-222 to 17b-250, inclusive, 17b-256,  
350 17b-263, 17b-340 to 17b-350, inclusive, 17b-689b and 17b-743 to 17b-  
351 747, inclusive.

352 (o) Until the hearing is held, the defendant, if not released on a  
353 promise to appear, conditions of release, cash bail or bond, shall  
354 remain in the custody of the Commissioner of Correction unless  
355 hospitalized as provided in sections 17a-512 to 17a-517, inclusive.

356 (p) (1) This section shall not be construed to require the  
357 Commissioner of Mental Health and Addiction Services to place any  
358 [violent] defendant who presents a significant security, safety or  
359 medical risk in a [mental institution] hospital for psychiatric  
360 disabilities which does not have the trained staff, facilities [and] or  
361 security to accommodate such a person, as determined by the

362 Commissioner of Mental Health and Addiction Services in  
363 consultation with the Commissioner of Correction.

364 (2) If a defendant is placed for treatment with the Commissioner of  
365 Mental Health and Addiction Services pursuant to subsection (i) of this  
366 section and such defendant is not placed in a hospital for psychiatric  
367 disabilities pursuant to a determination made by the Commissioner of  
368 Mental Health and Addiction Services under subdivision (1) of this  
369 subsection, the defendant shall remain in the custody of the  
370 Commissioner of Correction. The Commissioner of Correction shall be  
371 responsible for the medical and psychiatric care of the defendant, and  
372 the Commissioner of Mental Health and Addiction Services shall  
373 remain responsible to provide other appropriate services to restore  
374 competency.

375 (3) If a defendant remains in the custody of the Commissioner of  
376 Correction pursuant to subdivision (2) of this subsection and the court  
377 finds that the defendant is still not competent and will not attain  
378 competency within the remainder of the period covered by the  
379 placement order absent administration of psychiatric medication for  
380 which the defendant is unwilling or unable to provide consent, the  
381 court shall proceed as provided in subdivisions (2), (3) and (4) of  
382 subsection (k) of this section. Nothing in this subdivision shall prevent  
383 the court from making any other finding or order set forth in  
384 subsection (k) of this section.

385 (q) This section shall not prevent counsel for the defendant from  
386 raising, prior to trial and while the defendant is not competent, any  
387 issue susceptible of fair determination.

388 (r) Actual time spent in confinement on an inpatient basis pursuant  
389 to this section shall be credited against any sentence imposed on the  
390 defendant in the pending criminal case or in any other case arising out  
391 of the same conduct in the same manner as time is credited for time  
392 spent in a correctional facility awaiting trial.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2012</i>	54-56d(i) to (r)
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**Statement of Legislative Commissioners:**

In section 1(i)(2), "A" was moved for proper form.

**JUD**      *Joint Favorable Subst.-LCO*